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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of a Class A	)	MM Docket No. 00-10
Television Service	)	MM Docket No. 99-292
	)	RM 9260
	)	
	)	

To: The Commission

COMMENTS OF BLADE COMMUNICATIONS, INC.

Blade Communications, Inc. ("Blade"), by its attorneys, submits herewith its comments in response to the Commission's Notice of Proposed Rule Making[1] to implement the Community Broadcasters Protection Act of 1999[2] and to prescribe regulations establishing a Class A television service for qualifying low power television ("LPTV") stations. Blade, through wholly owned subsidiaries, owns four full power stations throughout the country.[3] Given the extensive implications that the Commission's proposed rules will have on full power television stations, Blade has an important interest in the outcome of this proceeding.

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[1] Establishment of a Class A Television Service, *Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("*Notice*").

[2] Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("CBPA").

[3] Blade owns KTRV(TV), Nampa, Idaho; WLFI-TV, Lafayette, Indiana; WLIO-TV, Lima, Ohio; and WDRB-TV, Louisville, Kentucky.

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I. THE COMMISSION SHOULD BROADLY APPLY THE PRIORITY CONGRESS GRANTED DTV STATIONS.

Congress was concerned that granting LPTV stations quasi-primary status could harm viewers' opportunity to receive digital service from full power broadcasters. Accordingly, Congress instructed the Commission affirmatively to make those modifications necessary to ensure the replication of full power broadcasters' service areas (or to permit maximization, to those qualifying) in the event "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment."[4] Congress took this extra step to give full power DTV stations priority over class A stations. If viewers of an analog station cannot receive the signal of the paired DTV station, then, if need be, class A stations must give way. Full power DTV stations can displace class A LPTV stations if replication is threatened.

The Commission must understand from the outset that, necessarily, the technical problems to which Congress refers will be largely unforeseen. To provide certainty, the Commission should announce that it will apply this priority for full power stations to the extent necessary to ensure that viewers have the ability to receive the digital signals of any analog station they already can receive. This will remind prospective LPTV class A licensees that the implementation of digital television remains in progress and places them on notice that their facilities still may be subordinated in the interests of viewers.

Although most problems will be unpredictable, the Commission may find that all broadcasters would benefit if it provides examples of technical problems that may act to displace class A stations. Blade is aware of one contemporary possibility. The Commission's decision to commit to the single DTV transmission standard of 8-VSB increases the significance of antenna

[4] 47 U.S.C. § 336(f)(1)(D).

orientation difficulties for viewers.[5] Until presently unforeseeable technical improvements are achieved, viewers in metropolitan areas will have to align their receiver antennae in a narrow range if they hope to obtain reliable DTV service. Viewers effectively may not receive stations that do not transmit from the same location as most other area stations. Thus, the DTV transmission standards that the Commission has mandated will make it imperative for many DTV stations to relocate to local antenna farms so that viewers can receive signals of all broadcasters. If relocating a full power station would have an impact on a class A station, the CBPA requires the Commission to permit the relocation and prohibit the class A station from causing interference.

The Commission also must give priority to pending and soon-to-be filed petitions for alternative DTV allotments. Congress authorized the Commission to change a full power station's authorized parameters or channel to resolve technical problems created by the implementation of the CBPA. Express grant of this authority in the CBPA shows that Congress intended that the Commission give applicants broader latitude for technical changes to cope with the effects of the CBPA than the Commission would have accorded them under its existing rules and policies. The Commission should make full use of this authority to ensure that full power broadcasters can complete their DTV implementation plans and should adopt a liberal waiver policy to give full power DTV stations the flexibility needed to modify their allotted parameters – especially in the early portions of the DTV transition period. This includes granting priority for pending and soon-to-be filed petitions for alternative DTV allotments. The Commission must complete its unfinished DTV business and not permit class A stations to impair DTV replication.

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[5] Letter from Magalie Roman Salas, Secretary, Federal Communications Commission, to Martin

II. THE COMMISSION MUST GIVE PENDING APPLICANTS FOR NEW STATIONS PRIORITY OVER CLASS A STATIONS.

The Commission has misinterpreted 47 U.S.C. § 336(f)(7)(A)(i) in proposing that pending applications for new stations would not be protected against Class A service.[6] Throughout the Commission's implementation of DTV, it has acted to protect the proposed allotments for qualifying pending applicants for new stations.[7] Congress enacted the CBPA on the background of the Commission's long-standing determination to protect these applications,[8] and no part of the CBPA explicitly reverses this protection. Moreover, LPTV licensees cannot claim to be unaware of the plans of pending applicants. As of November 29, 1999, the contours of the proposed stations were a matter of public record and known to prospective class A licensees. Accordingly, the Commission must continue its policy of protecting pending applicants for new stations and prohibit class A stations from precluding grant of the applications.

The Commission latches on to the phrase "transmitting in analog format" to propose that pending applications would not be protected. Section 336(f)(7), however, is written in the negative[9] and, accordingly, cannot be construed as the solitary source of authority for protecting full power stations against class A stations. In other words, the section does not represent the

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...continued

R. Leader, Counsel for Sinclair Broadcast Group, FCC 00-35 (Feb. 4, 2000).

[6] *Notice* at ¶27.

[7] Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, 14639 (1997).

[8] *See Fogerty v. Fantasy, Inc.*, 510 US 517, 114 S.Ct. 1023, 1030 (1994), *citing Lorillard v. Pons*, 434 US 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute). *See also Goodyear Atomic Corp v. Miller*, 486 US 174, 184 (1988) (Congress is presumed to know the existing law pertinent to the legislation it enacts).

[9] *I.e.*, "The Commission may not grant a class A license . . . unless. . ." 47 U.S.C. § 336(f)(7).

exhaustive set of conditions for protecting full power stations.[10] The Commission is permitted to adopt reasonable measures to protect full power stations. Allowing pending applicants to place their planned stations into operation is consistent with Congress' clear intent not to impair the ability of full power stations to serve their communities.

III. THE COMMISSION SHOULD PERMIT DTV-STYLE COORDINATION AND INTERFERENCE AGREEMENTS.

In implementing digital television, the Commission adopted a new paradigm for broadcast regulation that more closely resembles the free market. Full power broadcasters may reach voluntary channel coordination and interference agreements with fellow primary broadcasters, and the Commission will honor those arguments.[11] If LPTV stations now will obtain quasi-primary status, there is no sound basis to preclude class A licensees from entering into those arrangements as well. Given the spectrum constraints of the transition, there is every reason to give broadcasters the flexibility to resolve potential disputes and develop more efficient accommodations. Accordingly, the Commission should permit full power and low power broadcasters to enter into agreements as specified in Section 73.623(f) to resolve interference and related concerns or to obtain improved allotment arrangements.

IV. INTERFERENCE PROTECTION

The Commission should adopt the existing *de minimis* interference standard specified in section 73.623(c)(2) to determine interference protection between full power and class A stations. Additionally, the Commission should only consider first- and adjacent-channel operations when determining interference between full and low power stations. The so-called

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[10] *See, e.g.*, 47 U.S.C. § 336(f)(1)(D).

[11] 47 C.F.R. §73.623(f).

taboo protections should not be applied because an LPTV station's smaller service area generally would not be adversely affected.

V. THE COMMISSION SHOULD PROTECT FULL POWER STATIONS' RIGHT TO SWITCH TO THEIR TRADITIONAL ANALOG CHANNEL AFTER THE COMPLETION OF THE DTV TRANSITION.

As the Commission recognizes, the CBPA does not address explicitly the extent to which full power broadcasters will be able to protect their DTV contour if they revert to their traditional analog channel after the close of the DTV transition period.[12] However, the CBPA generally protects full power stations' existing Grade B contours and allotted DTV contours.[13] Accordingly, statutory construction requires the Commission to prohibit class A stations from causing interference to full power stations that revert to their traditional channel – even if those facilities are maximized.

A. The CBPA Permits the Right of Full Power Stations to Revert to Their Analog Channel.

The Commission has yet to adopt guidelines for full power stations to elect their permanent channel at the close of the DTV transition, but Congress contemplated such an election would be permitted where possible.[14] Tenets of statutory construction thus require the Commission to assume that Congress was aware of this policy when it passed the CBPA.[15] Moreover, Congress plainly intended to protect both the analog service areas of existing full

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[12] *Notice* at ¶34.

[13] 47 U.S.C. § 336(f)(7)(A).

[14] "[T]he Commission shall . . . require that either the additional [DTV] license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment." 47 U.S.C. § 336(c).

[15] See *Goodyear Atomic Corp v. Miller*, 486 US at 184.

power stations and the corresponding replicated DTV service areas.[16] Accordingly, the Commission is compelled to protect the service area of a full power station that reverts to its traditional channel after the DTV transition period's close. Only in this manner would Congress' concern about replication be given effect.

Not only is the Commission required to adopt this construction, it is the one that makes the most sense. Congress surely did not develop the elaborate structure in the CBPA to protect full power stations' ability to replicate their analog service only to have that protection compromised if a station reverts to its traditional channel. It would be inconsistent with the CBPA to preclude a full power station from reverting to its analog channel and prevent affected viewers from continuing to receive the station's service.

B. The CBPA Permits Reverted Stations to Maximize Facilities.

Congress intended that stations reverting to their analog channel after the close of the DTV transition also would be able to maximize facilities. This is demonstrated by the CBPA's lack of distinction between protecting a station's maximized facilities on either its analog or digital channel. Congress makes this plain by using the term "digital" in the other three clauses of section 336(f)(7)(A)(ii) but omitting it from the clause regarding maximization. If Congress had intended only to protect the maximization opportunities for the digital channel operation, it would have included the term "digital" in clause IV and silenced any questions.

Such statutory construction is consistent with Congressional directives to preserve full power stations' opportunity to maximize. In section 336(f)(1)(D), Congress established detailed

[16] 47 U.S.C. § 336(f)(7)(A).

procedures to permit DTV stations to maximize facilities.[17] It would not be reasonable for Congress to allow for a "temporary maximization" for a full power station and then terminate it if the station ultimately reverts to its former analog channel. If Congress had intended the absurd result of a "temporary maximization," it would have included such a provision in the statute.

The Commission suggests in the *Notice* that stations would need to take additional steps to preserve their right to replicate their maximized DTV service area on the analog channel.[18] This is not necessarily the case. The CBPA states that the Commission may not grant a class A license if the station would cause interference to maximized facilities.[19] If, after a full power station reverts to its traditional channel, a class A station causes interference to the full power station's maximized contour, then the class A station must be subordinated to the extent necessary. Maximizing full power stations did not and do not have to account for low power stations. Section 336(f)(7)(A)(ii)(IV) makes that plain.

Full power stations should not have to take any additional action to preserve maximization rights for their analog channels. The CBPA does not require that any additional action be taken. As discussed above, section 336(f)(7)(A)(ii)(IV) does not restrict a station's maximization protection to the digital channel.[20] Moreover, analog stations effectively have satisfied the notice requirements referenced in section 336(f)(7)(A)(ii)(IV) and specified in section 336(f)(1)(D) because their facilities already are "maximized," as that term would be

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[17] 47 U.S.C. § 336(f)(1)(D). Note that Congress rightly presumes that analog stations already are "maximized," as that term would be applied to analog operations and thus does not grant a similar opportunity to *analog operations*. This is to be contrasted to *digital operations* on the former analog channel.

[18] *Notice* at ¶34.

[19] 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

[20] *Id.*

applied in these circumstances.[21] When a station reverts to its traditional channel, however, the authorized station at that point in time may not reflect maximized facilities. A station that properly had submitted a maximization notice would be deprived of the benefit it acted to protect. By preserving the maximization opportunities for reverting stations – as the CBPA permits – the Commission would ensure that viewers would not lose their over-the-air television service.

For these reasons, Blade asks the Commission to consider its comments.

Respectfully submitted,

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[21] *I.e.*, it must be assumed that analog stations already have expanded their service areas to the extent the Commission's rules permit.